

**Letter of Findings: 01-20191371  
Individual Income Tax  
For Tax Year 2012**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Individual established that he was not domiciled in Indiana in tax year 2012 and had effectively abandoned his Indiana domicile. However, Individual must still file a non-resident return reflecting any income he had from rental activities in Indiana.

### ISSUE

#### I. Individual Income Tax - Residency.

**Authority:** IC § 6-8.1-5-1; IC § 6-3-2-1; IC § 6-3-1-12; IC § 6-1.1-12-37; *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax for the 2012 tax year.

### STATEMENT OF FACTS

Taxpayer is an out-of-state resident who lived and worked in Indiana during tax years 2010 and 2011. In 2011 Taxpayer left Indiana to reside in his New York home. In July of 2018 Taxpayer filed a 2012 part-year Indiana income tax return reporting approximately \$120,000 in Indiana income. While reviewing Taxpayer's return, the Indiana Department of Revenue ("Revenue") determined that Taxpayer should have filed as a full-time resident and thus adjusted Taxpayer's Indiana return to reflect his Federal adjusted gross income of approximately \$465,000. As a result, Taxpayer was assessed additional Indiana income tax as well as penalty and interest. Taxpayer protested and an administrative hearing was held. This Letter of Findings results. Additional facts will be provided as necessary.

#### I. Individual Income Tax - Residency.

### DISCUSSION

Taxpayer filed as a part-year resident of Indiana for the 2012 tax year. The Department determined that Taxpayer was an Indiana resident for the entire 2012 tax year and that all of his 2012 income was subject to Indiana income tax. As such, the Department issued Taxpayer a proposed assessment of additional tax plus penalty and interest.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus,

all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). Pursuant to IC § 6-3-1-12, a resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." In other words, a resident includes individuals who are **domiciled** in Indiana or **maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana**. Taxpayer provided sufficient evidence to show that he spent considerably less than 183 days in Indiana in 2012, thus, to be considered a resident of Indiana, Taxpayer must have been **domiciled** in Indiana.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

For the purposes of this Act, **a person has only one domicile at a given time** even though that person maintains more than one residence at that time. **Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

**In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

**The determination of a person's intent in relocating is necessarily a subjective determination.** There is no one set of standards that will accurately indicate the person's intent in every relocation. **The determination must be made on the facts present in each individual case.** Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

**(Emphasis added).**

Indiana law further defines "[h]omestead" as "an individual's place of residence . . . that is located in Indiana" and that "the individual owns . . . ." IC § 6-1.1-12-37(a)(2). "'Principal place of residence' means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence." [50 IAC 24-2-5](#). A taxpayer is entitled to claim a deduction, known as a homestead deduction (or exemption), against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction (or exemption), the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the date of that change. IC § 6-1.1-12-37(f).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as she could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

"[D]omicile" . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

*Id.* at 277. (Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in *Croop* stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

**"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."**

To effect a change of domicile, **there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.**

*Id.* at 277-78. (Internal citations omitted) (**Emphasis added**).

Subsequently, in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court further considered the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. The court concluded that Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court explained, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.**

*Id.* at 1317-18 (Ind. 1988). (**Emphasis added**).

In the instant case, since leaving graduate school Taxpayer has moved approximately twenty-five times. Prior to 2012 he lived in France for a three-year work contract and prior to France he lived in Michigan. Taxpayer moved to Indiana in 2010 to start a new job. Taxpayer purchased a home in this state and claimed the homestead deduction on that home. Taxpayer states that his intention when moving to Indiana was to work for a few years and then retire. In fact, in 2011 Taxpayer purchased a retirement home in New York in furtherance of that intention. However, in 2011 Taxpayer was let go from his job, so he moved to his New York home. Shortly after moving to New York, Taxpayer was hired by a company based out of North Carolina. Taxpayer's new employer had several locations to which Taxpayer traveled, but none of those locations were in Indiana. In fact, Taxpayer found himself spending so much time in North Carolina, that he rented an apartment there from March 2012 through 2013 and now lives full time in North Carolina. Taxpayer is now retired and has no intention of returning to Indiana.

As it pertains to tax year 2012, Taxpayer had moved to New York, was working out of his New York home, he paid vehicle taxes outside Indiana and put his Indiana home up for sale. His Indiana home failed to sell, so Taxpayer rented it out, earning approximately \$24,000 in rental income. Taxpayer did claim the homestead deduction on his Indiana home, but removed that deduction for tax years 2013 going forward. The Department

has established multiple times that the existence of a homestead deduction alone is not enough to declare Indiana as a Taxpayer's state of domicile. The same is true here. Though Taxpayer was not domiciled in Indiana in 2012, he did earn rental income in this state. Therefore, the only income Taxpayer need report in Indiana is that rental income, along with related expenses.

Taxpayer's protest is sustained but Taxpayer is instructed to file a 2012 Indiana return reflecting his rental activity. The Department will then recalculate the amount of Indiana income tax due, if any, for 2012 and will issue a revised assessment based on that calculation. Taxpayer is advised to file his revised 2012 Indiana return within thirty days of the date of this Letter of Findings.

### **FINDING**

Taxpayer's protest is sustained.

March 16, 2020

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An [html](#) version of this document.